

**General Information Letter:** Presence of one employee within Illinois.

March 17, 1998

Dear:

This is in response to your letter of February 25, 1998. Department rules require that the Department issue two types of letter rulings, private letter rulings (**PLRs**) and general information letters (**GILs**). For your general information we have enclosed a copy of 2 Ill. Adm. Code 1200 regarding letter rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your questions and the information provided require that we respond with a **GIL**. **GILs** are designed to provide background information on specific topics, however, **GILs** are not rulings that are binding on the Department, but **PLRs** are binding on the Department.

In your letter, you inquire as follows:

The purpose of this letter is to obtain a ruling on whether or not the following scenario would require a corporation to be liable for Illinois Department of Revenue Corporate Income Taxes.

#### **Company Background**

The subject company is a California Corporation that is located in Florida. The company has two office locations in Florida, which have five employees. One of the offices is the Corporation's Administrative headquarters and the other office is the Beverage Division headquarters. In addition, there is one employee that works out of his home in Indiana, and one employee who works out of his home in Illinois. The company's primary business activities include: (1) International licensing which grants other companies the right to use a patented technology to produce superoxygenated water and (2) wholesale sales of bottled superoxygenated water.

#### **Illinois Activities**

The company has no business location in Illinois. However, one employee lives and works out of his home in Illinois. His position within the company is Chief Executive Officer. He is responsible for overseeing all of the Corporation's activities. All of the activities conducted out of his home are Administrative. They are accomplished via fax, telephone, internet, and postal services. He does not meet with business associates or produce any kind of product at this location.

Will the fact that the Corporate CEO is living and working out of his home in Illinois create a relationship with the State of Illinois that would require this Corporation to report and pay Illinois Corporate Income Taxes?

In your letter, you are basically asking whether your company has the requisite connection (nexus) with the State of Illinois to be subject to Illinois income taxation. The determination of nexus is extremely fact-dependent. As a result, we decline to issue private letter rulings on the issue of whether a particular taxpayer has nexus with the State of Illinois. Such a determination may only be made in the context of an audit where the Department's auditor would have access to all relevant facts and circumstances.

Under Section 201 of the Illinois Income Tax Act, a tax measured by net income is imposed on a corporation for the privilege of earning or receiving income in this State (Copy enclosed). However, out-of-state ("foreign") corporations whose only activity within Illinois consists of the mere solicitation of orders for items of tangible personal property, which orders are accepted or rejected outside of Illinois, and if accepted are filled from inventories maintained outside of Illinois by shipment or delivery from those inventories to the customer within Illinois, are not subject to Illinois income tax because of the application of Public Law 86-272.

If a corporation exceeds this "mere solicitation" standard in Illinois, it loses its immunity and will be liable for income and the additional replacement income tax for the entire year. The business income would be apportioned to Illinois under Section 304 of the Illinois Income Tax Act pursuant to a three-factor formula based upon the corporation's Illinois property, payroll and sales (with the sales factor double-weighted) versus the total property, payroll and sales everywhere.

The foregoing constitutes only a general statement of Public Law 86-272 immunity from Illinois income tax and replacement income tax. The immunity is narrowly construed and can be forfeited easily. Whether a corporation's conduct exceeds the "mere solicitation" standard depends on the facts in each particular case.

Public Law 86-272 places restrictions on the states from taxing sellers of tangible personal property in certain circumstances. According to your description of the company's business, it appears that your company is engaged in the sale of tangible personal property (superoxygenated water) to an extent and as a result Public Law 86-272 might apply to your situation. However, it does not appear that the activities of the corporate CEO in Illinois constitute mere solicitation. In situations not governed by Public Law 86-272, Illinois takes the position that a foreign corporation is subject to income taxation if any of its business or nonbusiness income is apportionable or allocable, in whole or in part, to Illinois under the provisions of Section 301 through 304 of the Illinois Income Tax Act.

You should be aware of Section 502(a)(2) of the Illinois Income Tax Act. That provision requires that a corporation which is authorized to do business in this State, and is required to file a Federal income tax return will be required to file an Illinois income tax return regardless of whether the corporation is liable for Illinois income tax.

If you have any further questions, please feel free to contact our Department.

Very truly yours,

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